

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-7971**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROBERT LARRY JEFFREY, JR.,

Defendant - Appellant.

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Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Henry Coke Morgan, Jr., Senior District Judge. (CR-98-145; CA-03-252)

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Submitted: September 16, 2004      Decided: September 21, 2004

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Before LUTTIG, KING, and DUNCAN, Circuit Judges.

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Dismissed by unpublished per curiam opinion.

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Robert Larry Jeffrey, Jr., Appellant Pro Se. Janet S. Reincke, Assistant United States Attorney, Newport News, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Robert L. Jeffrey, Jr., seeks to appeal the district court's orders denying relief on his motion filed under 28 U.S.C. § 2255 (2000), and denying his motion for reconsideration. The orders are not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Jeffrey has not made the requisite showing.\* Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the

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\*After submitting his informal brief, Jeffrey filed a motion for leave to amend his pending application for a certificate of appealability asking this court to consider his case in light of the Supreme Court's recent decision in Blakely v. Washington, 124 S. Ct. 2531 (2004). Blakely has not been held by the Supreme Court to apply retroactively to cases on collateral review. See Tyler v. Cain, 533 U.S. 656, 662 (2001); In re Dean, \_\_ F.3d \_\_, 2004 WL 1534788 (11th Cir. 2004) (holding that Blakely is not retroactively applicable to cases on collateral review). Therefore, we deny Jeffrey's motion.

facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED